REMARKS

Applicants respectfully submit that the Examiner's rejection under 35 U.S.C. 102 is inappropriate and request reconsideration thereof.

First, as the Examiner has noted, Applicants rely on their filing date in France of August 29, 1978 which is almost three years earlier than the filing date of the application from which U.S. Patent 4,360,619 emanated.

Second, Applicants emphasize that their French application is of record in U.S. Patent 4,360,619, indicating that the Examiner considered Kugele et al to be patentably distinct from Applicants' invention. Further, the Examiner considered the claims of Kugele et al to be patentably distinct from the combination of Applicants' French application when considered with the various other elements of the prior art cited in the Kugele et al patent. If this proposition is in error, and Kugele et al is not patentable in light of Applicants' French Patent No. 2,434,835, either alone or in combination with other prior art, such as U.S. Patent 3,715,333 which teaches that the combination of known tin stabilizers such as dioctyltin bis(iso-octyl mercaptoacetate) and an organotin halide such as monobutyltin trichloride provides improved stabilization, then Applicants respectfully suggest that reexamination of the Kugele et al application under 37 CFR.§1.520 is the appropriate route, instead of interference.

Finally, it is respectfully noted that the specification and claims of Kugele et al are significantly different from the invention described and claimed by Applicants.

To illustrate the proposition that Kugele et al contain limitations and teachings that are significantly different from those described and claimed by Applicants, Applicants can paraphrase claim 60 of their application as follows:

> In a method for stabilizing a vinyl halide polymer against heat and light which comprises incorporating a tin-containing stabilizer therein.....the improvement which comprises replacing part of the tin-containing stabilizer with a mercaptoloweralkanol ester of a carboxylic acid containing 2 to 20 carbon atoms.

One can paraphrase claim 1 of Kugele as follows:

A) 40-70% of an organotin compound....

B) 10-60% of a mercaptan (which includes alkyl mercaptans, aryl mercaptans, mercaptocarboxylic acids, mercaptocarboxylic acid esters, mercaptoalcohols, mercaptothiols, mercaptoalcohol esters of carboxylic acids etc.)

C) 0-33% of a halogen-containing tin compound (as defined) with the proviso that when the weight percent of the halogen-containing tin compound is 0, then at least one of the organotin compounds of component A is selected from organotin compounds having certain specified formulas, each containing halogen bonded to the tetravalent tin atom.

Each and every claim of Kugele contains the limitation that there be present from 0-33% of a halogen-containing tin compound, as defined, with the proviso that when the weight percent of the halogen-containing tin compound is 0, then at

least one of the organotin compounds of component A is selected from organotin compounds having certain specified formulas, each containing halogen bonded to the tetravalent tin atom. Thus, Kugele et al mandate the presence of a halogen-containing tin compound where halogen is bonded to tetravalent tin.

Applicants do not provide for the required presence of a halogen-containing tin compound where halogen is bonded to tetravalent tin. This limitation of Kugele et al was considered material and was vigorously argued by Kugele et al during the prosecution of their case as a basis for patentability. The Examiner has suggested that a claim calling for an organotin compound, a mercapto ester and, optionally, a tin halide would be appropriate for interference. It is clear that such a simple formulation is not found in Kugele et al for copying by Applicants.

It is a fundamental element of Applicants' claimed invention that their mercapto ester is the the ester obtained by reacting a mercaptoloweralkanol with a carboxylic acid. Applicants have consistently urged that the various species of mercaptans such as alkyl mercaptans, mercaptocarboxylic acids and mercaptocarboxylic acid esters are not equivalent in performance to the ester of a mercaptoloweralkanol described and claimed.

Thus, because Kugele et al disclose and claim an invention that is different from that claimed by Applicants, the Examiner's rejection under 35 U.S.C. 102 is inappropriate.

Applicants urge that there is a significant difference between interference and infringement. Although the practice of the Kugele et al claims would infringe Applicants' claims, the converse is not true. It is entirely possible for one to practice the invention described and claimed by Applicants without infringing the claims of Kugele. Thus, Applicants and Kugele are not claiming the same invention. In reaching that conclusion Applicants, contrary to the Examiners assertion, disclaim nothing.

From the foregoing, it is apparent that Kugele et al is not properly available as a basis for rejection under 35 U.S.C. 102. Further, Applicants consider the Examiner's requirement that they copy claims of Kugele et al to be unwarranted and respectfully reject that invitation; they do so without disclaiming any overlapping subject matter. Applicants cannot understand how Kugele et al could be patentably distinct from their French Patent and yet be considered to conflict with it. An error on the part of the Patent Office can be corrected via 37 CFR.§1.520 and it is urged that this is the appropriate route. Reconsideration of Applicants' claims and passage of this case to issue are respectfully requested.

Respectfully submitted,

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Date

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